

**THE LABOR COMMISSION
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Thursday, November 20, 2008 - 12:00 P.M.
Room 319, Heber Wells Building
160 East 300 South
Salt Lake City, Utah**

The following Advisory Council members were in attendance:

Ralph Astorga, President USWA Local 392
Dawn Atkin, Esq.
Thomas Bingham, President, Utah Manufacturers Association
David Bird, Esq.
Brian Kelm, Esq.
Edward Holmes, M.D., RMCOEH
James V. Olsen, President, Utah Food Industry Association
Jeff Rowley, Risk Manager, Salt Lake County
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter
Brad Tibbitts, Utah State Insurance Department
Dennis Lloyd for Ray Pickup, Workers Compensation Fund

The following Advisory Council members were excused:

Brandt Goble, Painters and Tapers Local 77
Reo Castleton, SL County Fire Department
Susan Kelly, Liberty Mutual

Legislative Liaison present:

Senator Karen Mayne
Representative Mike Morley

Others Present:

Sherrie Hayashi - Commissioner
Alan Hennebold - Deputy Labor Commissioner
Larry Bunkall, Industrial Accidents Division Director, Labor Commission
Robyn Barkdull - Public Information Officer, Labor Commission
Richard LaJeunesse - Administrative Law Judge, Labor Commission
Dr. Kurt Hegmann - RMCOEH
Richard Burke - Attorney
Ron Dressler - Policy Director, Labor Commission

WELCOME

1. Welcome – Commissioner Hayashi

Commissioner Hayashi brought the meeting to order at 12:00 p.m. She welcomed the new Legislative liaisons, **Senator Karen Mayne and Representative Mike Morley** and asked Council members to introduce themselves indicating who they represented.

2. Miscellaneous Business

A. Approval of Minutes

Jeff Rowley moved to approve the minutes of the October 15, 2008 meeting. **Ralph Astorga** seconded the motion which passed unanimously.

B. Review Proposed 2009 Meeting Schedule – Commissioner Hayashi

Commissioner Hayashi gave Council members the dates for the 2009 WCA Council Meetings:

- i. Wednesday, January 28, 2009; 12:15 to 1:45 p.m. @ Capitol (room to be announced)
- ii. Wednesday, April 8, 2009; 11:30 a.m. to 1:30 p.m. @ LC Office
- iii. Wednesday, June 10, 2009; 11:30 a.m. to 1:30 p.m. @ LC Office
- iv. Wednesday, August 12, 2009; 11:30 a.m. to 1:30 p.m. @ LC Office
- v. Wednesday, October 14, 2009; 11:30 a.m. to 1:30 p.m. @ LC Office

C. Update on Rocky Mountain Center's Study on Public Officers' Exposure to Drugs

Dr. Kurt Hegmann distributed a final report summary to Council members with the findings of the study. He stated that there were some suggestions of elevated risks for lymphoma, melanoma, and colon and rectal cancers among police officers conducting meth-related tasks. There were also suggestions of elevated risks for all cancers among firefighters. He cautioned that because the participation rate for the study was very low, results should be viewed cautiously. There were a total of 5.3% of police officers and 13.9% of firefighters who participated. The entire study can soon be viewed online.

3. Review and Take Action on WC Legislation for 2009 General Session

Items recommended and reviewed by the Legislative Review Committee:

UEF Authority for Debt Collection

This issue was discussed and unanimously approved by the Legislative Review Committee and had been discussed in a previous WCA Council Meeting as well. **Mr. Bunkall** said the Commission would like to have the capability of directly collecting penalties through a private attorney. These penalties are associated with employers found to be non-compliant in having workers' compensation insurance. He said currently the law requires the Commission to use the Office of State Debt Collection (OSDC) to collect the money. Past experience has shown the OSDC to be less effective in collecting penalties than a private contract attorney. As this money is directly used to fund the UEF, **Mr. Bunkall** said the Commission is very dependent on these funds and would like to have the option of collecting through the most effective source.

Discussion was held as to the problems associated with using the OSDC and possible solutions. The suggestion was made to ask for a possible legislative audit of the OSDC. **Commissioner Hayashi** commented that it would be inappropriate for a state agency to request an audit of another state agency. She said this legislative approach solves several issues for the Commission and asked for the Council's support through the legislative process.

MOTION: **David Bird** moved that the Council support the proposed legislation which allowed the Commission to have the authority to use a private attorney to collect penalties for the UEF associated with employers who were non-compliant with the workers' compensation requirement. **Tom Bingham** seconded the motion which passed unanimously.

ALJ Mailings of Medical Panel Reports by Regular Mail

This item was also previously discussed by the Advisory Council. The Legislative Review Committee also suggested that the statute be clarified by specifically requiring medical panel reports be mailed to the parties' attorneys (found on line 69).

MOTION: James Olsen moved to recommend that the Commission approve the proposed legislation and submit it for filing. **Dawn Atkin** seconded the motion which passed unanimously.

Utah Injured Worker Reemployment Act

Mr. Bunkall explained that this Act will sunset at the end of 2008 and wanted the Council's recommendation on whether the Act should be continued. He said the Review Committee, as well as the Legislative Business & Labor interim committee agreed that it should continue but suggested some changes. The Act requires a rehabilitation counselor, but currently that position doesn't exist within the Labor Commission. That language needs to be omitted.

It has also been agreed that the assessment of \$5,000 for failure to make a report by a reporting entity should be changed to \$500 and the word "may" should be changed to "shall".

Mr. Bunkall said the enforcement of this Act is very minimal and will not place a burden on current staff.

MOTION: Tom Bingham moved to approve the language proposed as amended and agreed upon by the Business, Labor Interim Committee and the Commission's Legislative Review Committee. **Ralph Astorga** seconded the motion which passed unanimously.

UEF Payment of Benefits

Mr. Bunkall proposed the idea of giving the UEF administrator the flexibility to award benefits for those cases where the hearing had been held for an applicant, but the final judgment had not yet been written. He said this could be accomplished by a rule or internal process. **Mr. Bunkall** will prepare the language and bring the issue before the Council for discussion and consideration at the next meeting.

Amendments for Attorney Fees

Brian Kelm explained that this proposal was a result of concerns **Commissioner Hayashi** had received regarding the limited ability to obtain attorney fees on medical only cases and/or on cases where the medical was high and the compensation low. He said a subcommittee had met and discussed this issue and came to a consensus on the proposal distributed. The proposal is to allow an ALJ to award fees on meds if the compensation involved is less than \$4,000.

Discussion was held as the deletion of the language regarding the requirement for informal dispute resolution prior to awarding benefits.

Dennis Lloyd suggested the language be reinstated but the word "fully" be deleted and the word "reasonably" be used in its place in (4) (a) (i).

MOTION: Dawn Atkin moved that the proposed draft for Amendments to Attorney Fees be approved by the Commission with the reinstatement of the language in (4) (a) (i) and the word "reasonably" used instead of "fully". **Brian Kelm** seconded the motion which passed unanimously.

A new draft of the proposed language will be circulated to Council members for approval.

Other possible legislation to watch:

Criminal Penalties

Alan Hennebold distributed a copy of the proposed bill, Amendments to Agency Rulemaking Regarding Criminal Penalties. He said this bill modifies some statutory provisions regarding rulemaking authority by repealing statutory provisions that authorize certain state agencies to determine by administrative rule what conduct constitutes criminal penalty. He told the Council that the Commission will watch this issue.

Workers' Compensation Premium Assessments and Workplace Safety Funding

Senator Karen Mayne told the Council this bill does the following five things:

- Creates the Eddie P. Mayne Workplace Safety and Occupational Health Funding program to promote education and research related to workplace safety and occupational health.
- Repeals language allowing the Workplace Safety Account money to be used by the Labor Commission for scientific studies.
- Lowers the maximum Premium Assessment from 8.0% to 5.75%.
- Requires the Advisory Council and the Commission to review the premium assessment structure and make recommendations to the legislature by October, 2009.
- At the end of the Fiscal Year, it sweeps any account balance over \$500k from the Workplace Safety Account into the Employers' Reinsurance Fund Account.

Sen. Mayne felt this was an appropriate use of funds from the Workplace Safety Account and said the bill was developed in cooperation with representatives from employer groups. The bill will allow an ongoing appropriation of \$150,000 to the Rocky Mountain Center for Occupational and Environmental Health.

It was suggested the "sweep" be moved to the calendar year beginning January 1, 2009, rather than the Fiscal Year and **Sen. Mayne** indicated Patricia Owen of Legislative Research was researching that possibility.

David Bird posed the question as to whether it was an appropriate use of Workplace Safety Account money to be providing an on-going appropriation to the Rocky Mountain Center.

MOTION: David Bird moved that the Council support the preparation of the bill by **Sen. Mayne** through Legislative Research with the intent to move the sweep date to January 1, 2009. He also said percentages and amounts may need to be fine-tuned. After the bill is drafted, the Council will then review it and vote by email prior to the January 28th meeting of the Council. **Brian Kelm** seconded the motion which passed unanimously.

At the request of **Commissioner Hayashi**, **Representative Morley** and **Senator Mayne** both agreed to sponsor those bills which had been given unanimous approval by the Workers' Compensation Advisory Council.

Larry Bunkall told Council members he will keep in touch with them regarding prospective legislation.

Commissioner Hayashi reminded Council members that the next meeting will be held January 28th at 12:15 at the Capitol. The room will be determined at a later date and Council will be notified.

The **Commissioner** adjourned the meeting at 2:00 p.m.